

AMENDED IN ASSEMBLY SEPTEMBER 8, 1999

AMENDED IN ASSEMBLY SEPTEMBER 7, 1999

AMENDED IN ASSEMBLY SEPTEMBER 3, 1999

AMENDED IN ASSEMBLY JULY 12, 1999

AMENDED IN SENATE JUNE 2, 1999

AMENDED IN SENATE APRIL 27, 1999

AMENDED IN SENATE APRIL 6, 1999

## SENATE BILL

**No. 460**

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### Introduced by Senator Hayden

February 17, 1999

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~~An act to amend Sections 2671, 2675, 2675.5, and 2679 of, and to add Sections 1174.2, 2671.5, 2673.1, and 2679.1 to, the~~ *An act to add Sections 1174.2, 2671.5, and 2673.1 to the* Labor Code, relating to employers.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 460, as amended, Hayden. Employee wages.

Existing law requires employers to keep payroll records showing the hours worked and the wages paid to employees and to provide itemized statements to employees at the time of payment of wages.

This bill would create a rebuttable presumption in an action for the nonpayment of wages that if an employer fails to keep required payroll records or fails to provide required wage

deduction statements, an employee's claim of hours worked would be valid.

Existing law requires persons carrying out garment manufacturing to register with the Labor Commissioner and to pay specified registration fees.

This bill would require that apparel procured by the state for its use be produced by registered contractors and registered manufacturers if it is manufactured in California. The bill would require the commissioner to convene a task force to determine if any public funds are expended for procurement or purchase of textiles or apparel used by state or local government that are produced in sweatshops, as defined, and would require a report to the Legislature on or before September 1, 2000. ~~The bill would require a person to register with the commissioner if the person sells or purchases for resale finished wearing apparel carrying a specified private label or if the seller or purchaser requires or provides the specifications for manufacturing or design of the wearing apparel.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1174.2 is added to the Labor
- 2 Code, to read:
- 3 1174.2. In any action brought for the nonpayment of
- 4 wages, there is a rebuttable presumption affecting the
- 5 burden of proof that an employee's claim of hours worked
- 6 is valid if the employer fails to keep accurate and
- 7 contemporaneous records pursuant to subdivision (d) of
- 8 Section 1174 or Section 2673 or fails to provide itemized
- 9 wage deduction statements pursuant to Section 226.
- 10 ~~SEC. 2. Section 2671 of the Labor Code is amended to~~
- 11 ~~read:~~
- 12 ~~2671. As used in this part:~~
- 13 ~~(a) "Person" means any individual, partnership,~~
- 14 ~~corporation, limited liability company, or association, and~~
- 15 ~~includes, but is not limited to, textile producers engaged~~



1 in garment manufacturing, employers, manufacturers,  
2 jobbers, wholesalers, contractors, and subcontractors.

3 “Person” does not include any person who  
4 manufactures garments by himself or herself, without the  
5 assistance of a contractor, employee, or others; any person  
6 who engages solely in that part of the business engaged  
7 solely in cleaning, alteration, or tailoring; any person who  
8 engages in the activities herein regulated as an employee  
9 with wages as his or her sole compensation; or any person  
10 as provided by regulation.

11 (b) “Garment manufacturing” means sewing, cutting,  
12 making, processing, repairing, finishing, assembling, or  
13 otherwise preparing any garment or any article of  
14 wearing apparel or accessories designed or intended to be  
15 worn by any individual, including, but not limited to,  
16 clothing, hats, gloves, handbags, hosiery, ties, scarfs, and  
17 belts, for sale or resale by any person or any persons  
18 contracting to have the above operations performed.  
19 Garment manufacturing includes the sale or purchase for  
20 resale of any finished wearing apparel carrying a private  
21 label, owned in whole or part, or licensed to the seller or  
22 the purchaser, or where the specifications for  
23 manufacturing or design of the wearing apparel are  
24 required or provided by the seller or the purchaser.

25 (c) “Commissioner” means the Labor Commissioner.

26 (d) “Sweatshop” means a factory or homework  
27 operation that violates more than one federal or state  
28 labor law, including, but not limited to, laws governing  
29 the minimum wage and overtime, child labor, industrial  
30 homework, occupational safety and health, workers’  
31 compensation, or industry registration.

32 ~~SEC. 3.~~

33 *SEC. 2.* Section 2671.5 is added to the Labor Code, to  
34 read:

35 2671.5. (a) It is the intent of the Legislature that  
36 California set an example in the elimination of sweatshops  
37 through its public policies, including state procurement  
38 policies. The state’s goal should be to avoid purchasing,  
39 leasing, renting, contracting for, or taking on

1 consignment goods or services produced under  
2 sweatshop conditions.

3 (b) Any apparel procured by the state for its own use  
4 or that of its employees, and that is manufactured in  
5 California, shall be required to be produced by registered  
6 contractors and registered manufacturers. The state may  
7 not procure apparel for its own use, or that of its  
8 employees, that is manufactured within California by  
9 unregistered contractors or unregistered manufacturers.

10 (c) The commissioner shall convene a broad-based  
11 task force to determine whether any public funds are  
12 expended for the procurement or purchase of textiles,  
13 apparel, or other products used by state or local  
14 government that are produced in sweatshops in  
15 California or elsewhere.

16 (d) The task force shall be composed of procurement  
17 officials of state and local agencies and advocates and  
18 experts on the issue of sweatshop labor.

19 (e) Based on the task force's consideration, the  
20 commissioner shall determine whether bidders on state  
21 contracts should make specific disclosures of  
22 subcontractors and sites, and make commitments to  
23 eliminate sweatshop conditions in their workplaces  
24 regardless of the place of manufacturing, whether in  
25 California or elsewhere.

26 (f) The commissioner shall report the findings of the  
27 task force to the Legislature no later than September 1,  
28 2000, and make a preliminary report no later than May 1,  
29 2000.

30 ~~SEC. 4.~~

31 *SEC. 3.* Section 2673.1 is added to the Labor Code, to  
32 read:

33 2673.1. (a) Thousands of California workers continue  
34 to work in sweatshop conditions where violations of labor  
35 and health and safety laws are rampant, and enforcement  
36 of the law has been minimal.

37 (b) Many of these workers are from families of  
38 undocumented immigrants who lack many of the  
39 protections of a democratic society.

(c) The underclass culture perpetuated by these conditions creates immense social costs for health care, other social services, and law enforcement.

(d) The existence of sweatshops creates an unfair competitive advantage over small businesses that obey existing labor and health and safety laws.

(e) The existence of sweatshops in an affluent society is unjust and immoral and a blight on the broader quality of life.

(f) Improved working conditions for low-wage workers in sweatshops would lead to economic betterment for their families, greater consumer spending in the inner city, and a greater atmosphere of hope rather than despair.

~~SEC. 5. Section 2675 of the Labor Code is amended to read:~~

~~2675. (a) For purposes of enforcing this part and Sections 204, 209, 212, 221, 222, 222.5, 223, 226, 227, and 227.5, Chapter 2 (commencing with Section 300) and Article 2 (commencing with Section 400) of Chapter 3 of Part 1 of this division, Sections 1195.5, 1197, 1197.5, and 1198, Division 4 (commencing with Section 3200), and Division 4.7 (commencing with Section 6200), every person engaged in the business of garment manufacturing shall register with the commissioner.~~

~~The commissioner shall not permit any person to register, nor shall the commissioner allow any person to renew registration, until all the following conditions are satisfied:~~

~~(1) The person has executed a written application therefor in a form prescribed by the commissioner, subscribed and sworn by the person, and containing:~~

~~(A) A statement by the person of all facts required by the commissioner concerning the applicant's character, competency, responsibility, and the manner and method by which the person proposes to engage in the business of garment manufacturing if the registration is issued.~~

~~(B) The names and addresses of all persons, except bona fide employees on stated salaries, financially interested, either as partners, associates, or profit sharers,~~

~~1 in the proposed business of garment manufacturing  
2 together with the amount of their respective interests,  
3 except that in the case of a publicly traded corporation a  
4 listing of principal officers shall suffice.~~

~~5 (2) The commissioner, after investigation, is satisfied  
6 as to the character, competency, and responsibility of the  
7 person.~~

~~8 (3) In the case of a person who has been cited and  
9 penalized within the prior three years under this part, the  
10 person has deposited or has on file a surety bond in the  
11 sum and form that the commissioner deems sufficient and  
12 adequate to insure future compliance, not to exceed five  
13 thousand dollars (\$5,000). The bond shall be payable to  
14 the people of California and shall be for the benefit of any  
15 employee of a registrant damaged by the registrant's  
16 failure to pay wages and fringe benefits, or for the benefit  
17 of any employee of a registrant damaged by a violation of  
18 Section 2677.5.~~

~~19 (4) The person has documented that a current  
20 workers' compensation insurance policy is in effect for  
21 the employees of the person seeking registration.~~

~~22 (5) Unless the commissioner requires a higher  
23 registration fee pursuant to Section 2674.3, the person has  
24 paid an initial registration fee to the commissioner not to  
25 exceed three hundred dollars (\$300), or in the case of  
26 renewal of registration, a fee not to exceed two hundred  
27 dollars (\$200).~~

~~28 (b) At the time a certificate of registration is originally  
29 issued or renewed, the commissioner shall provide  
30 related and supplemental information regarding business  
31 administration and applicable labor laws. This related and  
32 supplemental information, as much as reasonably  
33 possible, shall be provided in the primary language of the  
34 garment manufacturer. The information shall include all  
35 subject matter on which persons seeking registration are  
36 examined pursuant to subdivision (e), and shall be  
37 available to persons seeking registration prior to taking  
38 this examination.~~

~~39 (c) Effective January 1, 1991, persons seeking  
40 registration under this section for the first time, and~~

1 persons seeking to renew their registration pursuant to  
2 subdivision (f), shall comply with all of the following  
3 requirements:

4 (1) Demonstrate, by an oral or written examination, or  
5 both, knowledge of the pertinent laws and administrative  
6 regulations concerning garment manufacturing as the  
7 commissioner deems necessary for the safety and  
8 protection of garment workers.

9 (2) Demonstrate, by an oral or written examination, or  
10 both, knowledge of state laws and regulations relating to  
11 occupational safety and health which shall include, but  
12 not be limited to, the following:

13 (A) Section 3203 of Title 8 of the California Code of  
14 Regulations (Injury Prevention Program).

15 (B) Section 3220 of Title 8 of the California Code of  
16 Regulations (Emergency Action Plan).

17 (C) Section 3221 of Title 8 of the California Code of  
18 Regulations (Fire Prevention Plan).

19 (D) Section 6151 of Title 8 of the California Code of  
20 Regulations which provides for the placement, use,  
21 maintenance, and testing of portable fire extinguishers  
22 provided for the use of employees.

23 (3) Sign a statement which provides that he or she  
24 shall do all of the following:

25 (A) Comply with those regulations specified in  
26 paragraph (2) which establish minimum standards for  
27 securing safety in all places of employment.

28 (B) Ensure that all employees are made aware of the  
29 existence of these regulations and any other applicable  
30 laws and are instructed in how to implement the Injury  
31 Prevention Program, Emergency Action Plan, and Fire  
32 Prevention Plan, specified in paragraph (2), in the  
33 workplace.

34 (C) Ensure that all employees are instructed in the use  
35 of portable fire extinguishers.

36 (D) Post the Injury Prevention Program, Emergency  
37 Action Plan, and Fire Prevention Plan, specified in  
38 paragraph (2), in a prominent location in the workplace.

39 (d) The Division of Occupational Safety and Health  
40 shall assist the Division of Labor Standards Enforcement

~~1 in developing the examination which shall include, but  
2 not be limited to, the state's occupational safety and  
3 health laws specified in paragraph (2) of subdivision (c).~~

~~4 (e) The commissioner shall charge a fee to persons  
5 taking the examinations required by subdivision (c)  
6 which is sufficient to pay for costs incurred in  
7 administering the examinations.~~

~~8 (f) A person seeking renewal of registration shall be  
9 required to take both of the examinations, and sign the  
10 statement, specified in subdivision (c). However, once a  
11 renewal of registration has been granted based on these  
12 examinations, subsequent examinations shall only be  
13 required at the discretion of the commissioner if, in the  
14 preceding year, the registrant has been found to be in  
15 violation of subdivision (a) or any of the sections  
16 enumerated in that subdivision.~~

~~17 (g) Proof of registration shall be by an official Division  
18 of Labor Standards Enforcement registration form.  
19 Every person, as set forth in Section 2671, shall post the  
20 registration form where it may be read by employees  
21 during the workday.~~

~~22 (h) At least 90 days prior to the expiration of each  
23 registrant's registration, the Labor Commissioner shall  
24 mail a renewal notice to the last known address of the  
25 registrant. The notice shall include all necessary  
26 application forms and complete instructions for  
27 registration renewal. However, omission of the Labor  
28 Commissioner to provide notice in accordance with this  
29 subdivision shall not excuse a registrant from making  
30 timely application for renewal of registration, shall not be  
31 a defense in any action or proceeding involving failure to  
32 renew registration, and shall not subject the Labor  
33 Commissioner to any legal liability under this section.~~

~~34 SEC. 6. Section 2675.5 of the Labor Code is amended  
35 to read:~~

~~36 2675.5. (a) The commissioner shall deposit  
37 seventy-five dollars (\$75) of each registrant's annual  
38 registration fee, required pursuant to paragraph (5) of  
39 subdivision (a) of Section 2675, into one separate account.  
40 Funds from the separate account shall be disbursed by the~~



1 commissioner only to persons determined by the  
2 commissioner to have been damaged by the failure to pay  
3 wages and benefits by a person who is required to register  
4 under this chapter. Any disbursed funds subsequently  
5 recovered by the commissioner shall be returned to the  
6 separate account.

7 (b) The remainder of each registrant's annual  
8 registration fee not deposited into the special account  
9 pursuant to subdivision (a) shall be applied to costs  
10 incurred by the commissioner in administering Section  
11 2675 and this section.

12 SEC. 7. Section 2679 of the Labor Code is amended to  
13 read:

14 2679. (a) The commissioner, in addition to any civil  
15 penalty imposed pursuant to Section 2678, may require  
16 that as a condition of continued registration, the  
17 employer deposit with him or her within 10 days a bond  
18 to ensure payment of wages and benefits in the sum and  
19 form as the commissioner may deem sufficient and  
20 adequate in the circumstances but not to exceed ten  
21 thousand dollars (\$10,000). The bond shall be payable to  
22 the commissioner and shall provide that the employer  
23 shall pay his or her employees in accordance with Section  
24 2675. In lieu of the deposit of a bond, the commissioner,  
25 in his or her discretion, may accept other evidence of  
26 financial security sufficient to guarantee payment of  
27 wages to affected employees.

28 (b) The commissioner, in addition to any civil penalty  
29 imposed, shall require a bond as set forth in subdivision  
30 (a) upon any second or subsequent violation within any  
31 two-year period. The commissioner may revoke the  
32 registration of any person for any period ranging from 30  
33 days to one year upon a third or subsequent violation  
34 within any two-year period and may confiscate any  
35 garment or wearing apparel, assembled or partially  
36 assembled, if the violation relates to minimum wages,  
37 child labor, or maximum hours of labor. If the  
38 commissioner does exercise the authority to confiscate  
39 upon such a third or subsequent violation, the  
40 commissioner shall notify persons for whom assembly is

1 performed and shall provide for the return of the  
2 garment owner's confiscated garments or wearing  
3 apparel upon the assumption and satisfaction of liability  
4 for the violation.

5 SEC. 8. Section 2679.1 is added to the Labor Code, to  
6 read:

7 2679.1. It is the intent of the Legislature to assure  
8 garment workers full payment of back wages owed them  
9 for work performed. Additionally, the Legislature affirms  
10 the right of garment workers to bring civil actions for  
11 back wages.

